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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,302	02/11/2004	Douglas F. Kelly	34250-1200	3553

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EXAMINER

SAVUSDIPHOL, PAULTEP

ART UNIT	PAPER NUMBER
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2876

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03/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/776,302

Applicant(s)

KELLY ET AL.

Examiner

PAULTEP SAVUSDIPHOL

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/5/2009 has been entered. Receipt is acknowledged of the amendment, filed on 1/5/2009, which has been entered in the file. Claims 1-28 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. **Claims 1-12** are rejected under 35 U.S.C. 103(a) as being obvious over **Strayer et al. (US 2004/0054622 A1)** in view of **Wilkes (US 2004/0153399 A1)**.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Regarding **claim 1**, **Strayer** discloses a computer implemented method for processing financial transactions, comprising:

receiving, via a processor, information relating to a plurality of electronic payment transactions [0009 & 0113];

categorizing, via a processor, each of said electronic payment transactions by one of a plurality of payment types [0043 & 0114], wherein the payment types comprise at least check payments, debit card payments, and credit card payments [0002-0005, 0014 & 0142]; and

determining, via a processor, a funding amount to be paid to a merchant, for each of said payment types, wherein the funding amount relates to a transaction amount, wherein the transaction amount is based upon at least one of the plurality of electronic payment transactions [0121-0123].

Regarding **claim 3**, **Strayer** discloses the method of claim 1, wherein the funding amount is further based upon an processing amount related to one or more transaction processing fees [0121-0123].

Regarding **claim 4**, **Strayer** discloses the method of claim 1, further comprising: generating a report identifying the funding provided to the merchant [0035-0036 & 0121-0125].

Regarding **claim 5**, **Strayer** discloses the method of claim 4, wherein the report identifies the electronic payment transactions that transpired prior to a defined period of time [0121-0125].

Regarding **claim 6**, **Strayer** discloses the method of claim 4, wherein the report is displayed electronically [0035-0039 – *wherein it is disclosed that the system includes*

a display device and is capable of various operations, one of which is reporting of merchant account activity; therefore an electronic displaying of report information].

Regarding **claim 7**, **Strayer** discloses a computer implemented system for processing financial transactions, comprising:

an interface for receiving information relating to a plurality of electronic payment transactions [0009 & 0113];

a memory device for categorizing each of said electronic payment transactions by one of a plurality of payment types [0036-0043 & 0114], wherein the plurality of payment types comprise at least check payments, debit card payments, and credit card payments [0002-0005, 0014 & 0142]; and

a processor for determining a funding amount to be paid to a merchant, for each of said payment types, wherein the funding amount relates to a transaction amount, wherein the transaction amount is based upon at least one of the plurality of electronic payment transactions [0036-0040 & 0121-0123].

Regarding **claim 9**, **Strayer** discloses the system of claim 7, wherein the processor further determines the funding amount based upon a processing amount relating to one or more transaction processing fees [0121-0123].

Regarding **claim 10**, **Strayer** discloses the system of claim 7, further comprising:

an output device for generating a report identifying the funding provided to the merchant [0035-0036 & 0121-0125].

Regarding **claim 11**, **Strayer** discloses the system of claim 10, wherein the report identifies the electronic payment transactions that transpired prior to a defined period of time [0121-0125].

Regarding **claim 12**, **Strayer** discloses the system of claim 10, wherein the report is displayed electronically [0035-0039 – *wherein it is disclosed that the system includes a display device and is capable of various operations, one of which is reporting of merchant account activity; therefore an electronic displaying of report information*].

Strayer fails to teach or particularly point out, identifying, via a processor, transactions eligible for pre-funding to a merchant, as recited in **claims 1 & 7**.

Wilkes teaches, regarding **claims 1 & 7**, identifying, via a processor, transactions eligible for pre-funding to a merchant [0041].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further employ the features of **Wilkes** within **Strayer** for the benefit of allowing a merchant to purchase goods or services once funds are available and without having to wait for settlement, thereby increasing the financial strength of the institution as well [0026 & 0039].

2. With respect to **claims 2 & 8**, the teachings of the combination of **Strayer** and **Wilkes** have been discussed above.

This combination is silent regarding the plurality of payment types further comprising at least one of a stored value card, loyalty point redemptions or electronic benefit transfers, as recited in **claims 2 & 8**.

However, **Strayer**, as modified by **Wilkes**, teaches the use of systems and methods for processing a variety of transaction types that may be presented to a merchant including credit and debit cards, corporate and check cards as well as processing checks and other types of non-cash payment instruments, see paragraphs [0002-0005, 0014 & 0142]. Furthermore **Strayer**, as modified by **Wilkes**, teaches that it would be beneficial to customers for merchants to accommodate customer preferences by allowing for a variety of payment options. Thus, with a variety of payment options available, it would be beneficial for merchants to have an effective card processing service that would be efficient while controlling expenses related with these payment options, see paragraph [0007]. One skilled in the art would appreciate that stored value cards are but one form of “non-cash” payment instruments that are widely known in the art and can be found, for example, in the form of gift cards or gift certificates for brick-and-mortar stores as well as online retailers. Although stored value cards or loyalty points are not explicitly mentioned, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such well known “non-cash” payment methods available for consumers as another means for which to carryout transactions.

3. **Claims 13, 15-21, & 23-28** rejected under 35 U.S.C. 103(a) as being unpatentable over **Strayer** in view of **Wilkes**, and further in view of **Kramer et al. (US 2003/0140007 A1)**.

Regarding **claim 13**, **Strayer** discloses a computer implemented method for processing financial transactions involving a merchant and consumers, comprising:

receiving, via a processor, information relating to a plurality of electronic payment transactions [0009 & 0113];

categorizing, via a processor, each of said electronic payment transactions by one of a plurality of payment types [0043 & 0114], wherein the plurality of payment types comprises at least check payments, debit card payments, and credit card payments [0002-0005, 0014 & 0142];

identifying, via a processor, one or more categories of electronic payment transactions for which funds are to be transferred from a consumer account and one or more categories of electronic payment transactions for which funds may be transferred from an account associated with a consumer [0043 & 0048-0050];

receiving, via a processor, confirmation respecting the transfer of funds for at least one of electronic payment transactions of the type to be transferred from a consumer account [0098]; and

providing funding, via a processor, to merchant, wherein the amount of said funding relates to the amount of funds for at least one of the electronic payment transactions for which said transfer confirmation is received [0121-0123].

Regarding **claim 15**, **Strayer** discloses the method of claim 13, wherein the amount of funding equals the amount of funds for at least one of the electronic payment transactions for which said transfer confirmation is received and the amount of funds respecting the electronic payment transactions that may be transferred from a consumer account [0121-0123].

Regarding **claim 16**, **Strayer** discloses the method of claim 13, wherein the amount of funding equals the amount of funds for at least one of the electronic payment transactions for which said transfer confirmation is received and the amount of funds respecting the electronic payment transactions that may be transferred from a consumer account, less an amount relating to one or more transaction fees [0121-0123].

Regarding **claim 17**, **Strayer** discloses the method of claim 13, wherein the received information relates to electronic payment transactions that transpired prior to a defined period of time and is within a predetermined amount of time after said defined period of time [0121-0125].

Regarding **claim 21**, **Strayer** discloses a computer implemented system for processing financial transactions involving a merchant and consumers, comprising:

- an interface for receiving information relating to a plurality of electronic payment transactions [0009 & 0113];
- a memory device for categorizing each of said electronic payment transactions by one of a plurality of payment types [0036-0043 & 0114], wherein the plurality of

payment types comprise at least check payments, debit card payments, and credit card payments [0002-0005, 0014 & 0142]; and

a processor:

for identifying one or more categories of electronic payment transactions for which funds are to be transferred from a consumer account, and one or more categories of electronic payment transactions for which funds may be transferred from an account associated with a consumer [0043 & 0048-0050],

for receiving confirmation respecting the transfer of funds for at least one of electronic payment transactions of the type wherein funds are to be transferred from a consumer account [0098], and

for providing funding to merchant, wherein the amount of said funding relates to the amount of funds for at least one of the electronic payment transactions for which said transfer confirmation is received and the amount of funds respecting the electronic payment transactions that may be transferred from a consumer account [0121-0123].

Regarding **claim 23**, **Strayer** discloses the system of claim 21, wherein the processor calculates the amount of funding by totaling the amounts of funds for at least one of the electronic payment transactions for which said transfer confirmation is received and the amount of funds respecting the electronic payment transactions that may be transferred from a consumer account [0121-0123].

Regarding **claim 24**, **Strayer** discloses the system of claim 21, wherein the processor calculates the amount of funding by totaling the amount of funds for at least

one of the electronic payment transactions for which said transfer confirmation is received and the amount of funds respecting the electronic payment transactions that may be transferred from a consumer account, and decrementing an amount relating to one or more transaction fees [0121-0123].

Regarding **claim 25**, **Strayer** discloses the system of claim 21, wherein the received information relates to electronic payment transactions that transpired prior to a defined period of time and is within a predetermined amount of time after said defined period of time [0121-0125].

Strayer fails to teach or particularly point out, identifying, via a processor, transactions eligible for pre-funding to a merchant, as recited in **claims 13 & 21**.

Wilkes teaches, regarding **claims 13 & 21**, identifying, via a processor, transactions eligible for pre-funding to a merchant [0041].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further employ the features of **Wilkes** within **Strayer** for the benefit of allowing a merchant to purchase goods or services once funds are available and without having to wait for settlement, thereby increasing the financial strength of the institution as well [0026 & 0039].

4. With respect to **claims 13, 15-17, 21 & 23-25**, the teachings of the combination of **Strayer** and **Wilkes** have been discussed above.

This combination fails to teach or particularly point out, identifying a cut-off time for providing to a merchant funding relating to said electronic payment transactions, as recited in **claims 13, 15-17, 21 & 23-25**.

Kramer teaches, regarding **claims 13, 15-17, 21 & 23-25**, identifying a cut-off time for providing to a merchant funding relating to said electronic payment transactions [0790, 0796 & 0803].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further employ the features of **Kramer** within the combination of **Strayer** and **Wilkes** for the benefit of providing for a more optimal and efficient system by setting deadlines or goals as the standard for all parties involved for future reference and verification.

Regarding **claim 18, Strayer**, as modified above, discloses the method of claim 17, further comprising: generating a report identifying the funding provided to the merchant [0035-0036 & 0121-0125].

Regarding **claim 19, Strayer**, as modified above, discloses the method of claim 18, wherein the report identifies the electronic payment transactions that transpired prior to said defined period of time [0121-0125].

Regarding **claim 20, Strayer**, as modified above, discloses the method of claim 18, wherein the report is displayed electronically [0035-0039 – *wherein it is disclosed that the system includes a display device and is capable of various operations, one of*

which is reporting of merchant account activity; therefore an electronic displaying of report information].

Regarding **claim 26, Strayer**, as modified above, discloses the system of claim 25, further comprising: an output device for generating a report identifying the funding provided to the merchant [0035-0036 & 0121-0125].

Regarding **claim 27, Strayer**, as modified above, discloses the system of claim 26, wherein the report includes the electronic payment transactions that transpired prior to said defined period of time [0121-0125].

Regarding **claim 28, Strayer**, as modified above, discloses the system of claim 26, wherein the output device is configured for displaying the report electronically [0035-0039 – *wherein it is disclosed that the system includes a display device and is capable of various operations, one of which is reporting of merchant account activity; therefore an electronic displaying of report information].*

5. **Claims 14 & 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Strayer, Wilkes and Kramer**.

With respect to **claims 14 & 22**, the teachings of the combination of **Strayer, Wilkes and Kramer** have been discussed above.

This combination is silent regarding the plurality of payment types further comprising at least one of a stored value card, loyalty point redemptions or electronic benefit transfers, as recited in **claims 14 & 22**.

However, **Strayer**, as modified by **Wilkes** and **Kramer**, teaches the use of systems and methods for processing a variety of transaction types that may be presented to a merchant including credit and debit cards, corporate and check cards as well as processing checks and other types of non-cash payment instruments, see paragraphs [0002-0005, 0014 & 0142]. Furthermore **Strayer**, as modified by **Wilkes** and **Kramer**, teaches that it would be beneficial to customers for merchants to accommodate customer preferences by allowing for a variety of payment options. Thus, with a variety of payment options available, it would be beneficial for merchants to have an effective card processing service that would be efficient while controlling expenses related with these payment options, see paragraph [0007]. One skilled in the art would appreciate that stored value cards are but one form of “non-cash” payment instruments that are widely known in the art and can be found, for example, in the form of gift cards or gift certificates for brick-and-mortar stores as well as online retailers. Although stored value cards or loyalty points are not explicitly mentioned, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such well known “non-cash” payment methods available for consumers as another means for which to carryout transactions.

Response to Arguments

Applicant's arguments with respect to claims 1, 7, 13 & 21 have been considered but are moot in view of the new ground(s) of rejection. The claims have been amended to include, in part, *“identifying, via a processor, transactions eligible for pre-funding to a*

merchant", which were not included in the original claims. The examiner has presented **Wilkes (US 2004/0153399 A1)** to overcome these amendments.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAULTEP SAVUSDIPHOL whose telephone number is (571)270-1301. The examiner can normally be reached on M-F, 8:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit: 2876

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